

New Agreement boosts cooperation between Swiss and German competition authorities

On November 1, 2022, Switzerland and Germany signed an Agreement on cooperation between their competition authorities ("Agreement"). In terms of content, there are strong parallels to the Agreement between the EU and the Swiss Confederation concerning cooperation on the application of their competition laws, which entered into force in 2014.

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AUTHORS	Marcel Meinhardt	Partner, Head of Competition
	Astrid Waser	Partner, Head of ESG
	Benoît Merkt	Managing Partner, Head of Competition
	Sevan Antreasyan	Partner, Head of Intellectual Property
EXPERTISE	Competition and Regulated Markets	

Main content of the Agreement

The Agreement aims to ensure efficient enforcement of competition law in cross-border situations. The Agreement has been modeled after the Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws, which entered into force in 2014.

The Agreement will enable future cooperation between the Swiss Competition Commission ("ComCo") and the German Federal Cartel Office. In the future, they will be able to take coordinated enforcement action, e.g. coordinated dawn raids or exchange of confidential information and evidence. In addition to the service of the broadly defined sovereign acts, the Agreement also allows for the direct service of notices, requests for information and other letters that do not constitute sovereign acts in the respective other contracting state. The German Federal Cartel Office is also entitled to disclose information obtained under the Agreement (Art. 8) to the EU Commission. Disclosure of such information to the competition authorities of other EU

states, on the other hand, requires the prior consent of the Competition Commission.

Outlook and conclusion

The Swiss Federal Assembly still has to approve the Agreement. After its entry into force, September 2023 at the earliest, an increase in parallel proceedings in cross-border cases in Switzerland and Germany is likely. In such proceedings, a uniform and coordinated procedural strategy for both countries will become more important. As the German Federal Cartel Office is particularly active in the data economy, the Agreement could become more significant than the cooperation Agreement with the EU already in force for companies especially in this particular sector.

Please do not hesitate to contact us in case of any questions.

Legal Note: The information contained in this Smart Insight newsletter is of general nature and does not constitute legal advice.

Marcel Meinhardt	Partner, Head of Competition, Zurich marcel.meinhardt@lenzstaehelin.com Tel: +41 58 450 80 00
Astrid Waser	Partner, Head of ESG, Zurich astrid.waser@lenzstaehelin.com Tel: +41 58 450 80 00
Benoît Merkt	Managing Partner, Head of Competition, Geneva benoit.merkt@lenzstaehelin.com Tel: +41 58 450 70 00
Sevan Antreasyan	Partner, Head of Intellectual Property, Geneva sevan.antreasyan@lenzstaehelin.com Tel: +41 58 450 70 00
